

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 19-0912V

UNPUBLISHED

CHRISTINA WITHAM,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: December 8, 2020

Special Processing Unit (SPU);
Damages Decision Based on Proffer;
Influenza (Flu) Vaccine; Shoulder
Injury Related to Vaccine
Administration (SIRVA)

Ronald Craig Homer, Conway, Homer, P.C., Boston, MA, for Petitioner.

Traci R. Patton, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION AWARDING DAMAGES¹

On June 21, 2019, Christina Witham filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*² (the “Vaccine Act”). Petitioner alleges that she suffered a shoulder injury related to vaccine administration (“SIRVA”) injury as a result of an influenza (“flu”) vaccine she received on October 3, 2017. Petition at 1. Petitioner further alleges she suffered the residual effects of her injury for more than six months after the administration of the flu vaccine. Petition at 18. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On November 12, 2020, a ruling on entitlement was issued, finding Petitioner entitled to compensation for SIRVA. On December 8, 2020, Respondent filed a proffer on award of compensation (“Proffer”) indicating Petitioner should be awarded a total of \$75,141.95, comprised of \$75,000.00 for pain and suffering and \$141.95 for past out of

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). **This means the decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all “§” references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

pocket medical expenses. Proffer at 1. In the Proffer, Respondent represented that Petitioner agrees with the proffered award. *Id.* Based on the record as a whole, I find that Petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, **I award Petitioner a lump sum payment of \$75,141.95, (comprised of \$75,000.00 for pain and suffering and \$141.95 for past out of pocket medical expenses) in the form of a check payable to Petitioner.** This amount represents compensation for all damages that would be available under § 15(a).

The clerk of the court is directed to enter judgment in accordance with this decision.³

IT IS SO ORDERED.

s/Brian H. Corcoran

Brian H. Corcoran
Chief Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

CHRISTINA WITHAM,

Petitioner,

V.

SECRETARY OF HEALTH AND HUMAN
SERVICES,

Respondent.

No. 19-912V

Chief Special Master Corcoran
ECF

RESPONDENT'S PROFFER ON AWARD OF COMPENSATION

I. Items of Compensation

On November 10, 2020, respondent conceded that entitlement to compensation was appropriate under the terms of the Vaccine Act. The Chief Special Master issued a Ruling on Entitlement on November 12, 2020, finding that petitioner was entitled to vaccine compensation for his right-sided shoulder injury related to vaccine administration (“SIRVA”). Based upon the evidence of record, respondent proffers that petitioner should be awarded \$75,141.95. The award is comprised of the following: \$75,000.00 for pain and suffering and \$141.95 for past out of pocket medical expenses. This amount represents all elements of compensation to which petitioner would be entitled under 42 U.S.C. § 300aa-15(a). Petitioner agrees.

II. Form of the Award

The parties recommend that compensation provided to petitioner should be made through a lump sum payment of **\$75,141.95**, in the form of a check payable to petitioner.¹ Petitioner agrees.

¹ Should petitioner die prior to entry of judgment, the parties reserve the right to move the Court for appropriate relief. In particular, respondent would oppose any award for future lost earnings and future pain and suffering.

Petitioner is a competent adult. Evidence of guardianship is not required in this case

Respectfully submitted,

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s/Traci R. Patton
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Dated: December 8, 2020